

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MICHAEL A. SORTISIO,

Plaintiff,

v.

17-CV-479-LJV-JJM
DECISION & ORDER

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

On May 30, 2017, the plaintiff, Michael A. Sortisio, brought this action under the Social Security Act. Docket Item 1. On October 19, 2017, this Court referred this case to United States Magistrate Judge Jeremiah J. McCarthy for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Docket Item 7.

On April 16, 2020, the plaintiff filed an amended motion for attorney's fees under 42 U.S.C. § 406(b), Docket Item 24, and on April 23, 2020, the defendant responded, Docket Item 25. On July 10, 2020, Judge McCarthy issued a Report and Recommendation ("R&R") finding that the plaintiff's amended motion should be granted. Docket Item 27. The parties did not object to the R&R, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). The court must review *de novo* those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the

recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge McCarthy's R&R as well as the parties' submissions to him. Based on that review and the absence of any objections, the Court accepts and adopts Judge McCarthy's recommendation to grant the plaintiff's amended motion.

For the reasons stated above and in the R&R, the plaintiff's amended motion for attorney's fees under 42 U.S.C. § 406(b), Docket Item 24, is GRANTED. The plaintiff's attorney is awarded fees in the amount of \$11,292.79. The plaintiff's attorney shall return to the plaintiff \$5,473.01 in fees under the Equal Access to Justice Act within 14 days of his receipt of the § 406(b) fees.

SO ORDERED.

Dated: July 31, 2020
Buffalo, New York

/s/ Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE